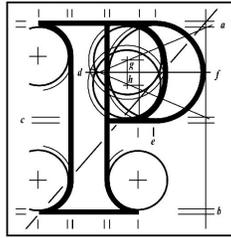


## An Bord Pleanála



**Appeal against;** 2 No. Conditions imposed by Dublin City Council on a Disability Access Certificate issued by Dublin City Council on August 20th 2013.

**For;** Material alterations, sub-division and fit-out.

**At;** Tesco Express Retail Store, Unit 5, Trinity Bioscience Building, Pearse Street, Dublin 2.

**Board DAC appeal ref no:** 29D DS 0048

**BCA Disability Certificate application no.;** DAC 111/13

**Appellant/Agent:** ORS Consulting Engineers on behalf of Tesco Ireland.

**Building Control Authority:** Dublin City Council

**Board Consultant name:** Denise Germaine MRIAI, MCIAT, ICIOB

**Site inspection/photographs:** None.

## **INTRODUCTION**

The application for a DAC Certificate to Dublin City Council comprises the following works;

The material alteration consisting of the subdivision of existing shell and core retail unit at Unit 5, Trinity Bioscience Building, Pearse Street, Dublin 2 into two separate units, Nos. 5 and 5B, and the internal fit-out of Unit 5B for a Tesco Express supermarket outlet.

A Disability Access Certificate was issued by Dublin City Council on July 10<sup>th</sup> 2013 with 9 conditions.

An appeal was lodged with An Bord Pleanála against Conditions Nos. 2 and 5.

An Bord Pleanála received documentation in support of the appeal.

## **INFORMATION CONSIDERED**

The full file of documentation, as supplied by An Bord Pleanála was considered in arriving at this recommendation. The documents reviewed, which refer to the proposed alterations, extension and change of use to the Crèche, were as follows;

- Original Planning Application, third party appeals and final grant of permission on appeal – 19<sup>th</sup> August 2013.
- Disability Access Certificate Application including Site Location Map, Plans, Sections & Elevations of proposed works and Compliance Report – 25<sup>th</sup> April 2013
- Disability Access Certificate with 9 conditions – Ref. DAC111/13 – 10<sup>th</sup> July 2013
- Appeal against conditions Nos. 2 and 5, including grounds of appeal – 2<sup>nd</sup> August 2013
- Dublin City Council Building Control Division's response in the form of observations on the appeal, but including no new material planning issues.– 27<sup>th</sup> August 2013.
- Appellant's response to the BCA observations – 2<sup>nd</sup> October 2013.

## **5. RELEVANT HISTORY/CASES**

The proposal is that the existing shell and core retail units at Unit 5, Trinity Bioscience Building, Pearse Street, Dublin 2 should be sub-divided into Units 5 and 5B to provide an enlarged Unit 5, which will be fitted out internally as a Tesco Express supermarket/convenience store with ancillary off-licence sales.

Reference is made in the grounds of appeal to thirteen similar projects in Dublin City for Tesco Ireland, for which Disability Access Certificates were granted.

The conditions attached to the Disability Access Certificate issued on November 1st 2012 are as follows;

**Condition No. 1**

That the works proposed for the above project shall be carried out in accordance with the plan, particulars and report lodged with the application, together with the performance requirement prescribed in the Disability Access Certificate Application report accompanying the application. Note: This Disability Access Certificate Application covers the material alteration (Sub-division and Fit-out) Tesco Express Store.

Reason

To make adequate provision for people regardless of age, size and disability.

**Condition No. 2**

Ensure all aisles should have a minimum of at least 1500mm wide with a clear 1800mm turning ends at both ends. This will allow two wheelchair users or trolleys to pass one another.

Reason

To facilitate adequate, safe and independent use of the building.

**Condition No. 3**

Cash registers with visual display of prices should be provided for people with hearing impairments and tourists.

Reason

To make adequate provision for people regardless of age, size and disability.

**Condition No. 4**

Cupboards/shelves should contrast visually with their immediate surroundings and should not have highly reflective surfaces.

Reason

To facilitate adequate access and use of the building and space about the building.

**Condition No. 5**

Shelf heights should be 450-1300mm and 450-1060mm for people standing and wheelchair users respectively and not 470-1600 as stated in the submitted report.

Reason

To facilitate adequate, safe and independent use of the building.

**Condition No. 6**

Provide shopping trolleys suitable for wheelchair users.

Reason

To facilitate and adequate access and use of the building and space about the building.

**Condition No. 7**

High level shelf in disabled WC should be at a height of at least minimum 1300mm.

Reason

To facilitate safe and adequate use of the disabled WC.

**Condition No. 8**

For the avoidance of doubt, all facilities and buildings should be capable of being used by all people regardless of age, size and disability.

Reason

To facilitate safe and adequate access use of the building.

**Condition No. 9**

All new internal doors should have a minimum clear opening width of not less than 800mm and unobstructed space of at least 300mm at the leading edge of the door.

Reason

To facilitate and adequate access and use of the building and space about the building.

## **6. APPELLANT'S CASE**

The Appellant is appealing against only two of the Conditions, namely, Nos. 2 and 5, and his case, based on documents lodged, is as follows;

**Condition No. 2**– The appellant states that TGD M 2010 is not specific regarding aisle width in retail shops/supermarkets. However, the recommendation for minimum corridor/passageway width in TGD M is 1200mm clear unobstructed width.

It is further stated that 1800mm diameter turning circles have been indicated at each end of the aisles. These aisles are considerably shorter than the recommended distance of 20m between 'passing places'.

The appellant quotes the precedent of thirteen similar Tesco Express fit-outs in the Dublin City Council area, for which DAC Certificates have been granted between 2010 and 2013 without this condition relating to aisle width.

The appellant therefore considers that this condition is overly restrictive and above and beyond the recommendations of the TGD M 2010.

**Condition No. 5**– The appellant states that there is no guidance in TGD M 2010 regarding shelf height in retail units. It is further stated that the Drawings and Compliance Report submitted with the application for Disability Access certificate did not specify the heights of the shelving, but merely the depth of the proposed shelving units as 470mm, and the overall height of the units as 1600mm. To restrict the height of shelving to two specific heights would be overly restrictive and would go against best practice in retail sales.

It is also stated that Tesco Express trained staff are available to assist any customer who has difficulty reaching any item on the shelving.

The appellant quotes the precedent of thirteen similar Tesco Express fit-outs in the Dublin City Council area, for which DAC Certificates have been granted between 2010 and 2013 without this condition relating to shelf height.

## **7. BCA CASE**

The BCA response to the appeal of Conditions Nos. 2 and 5 merely re-states the conditions, but does enlarge on the source of the dimensions it had stipulated for aisle width and shelf height as ‘Buildings for Everyone – Universal Design Approach’, pages 170/171. This would seem to relate to the older edition of this guidance and not to the latest edition, published in a set of 10 booklets in 2012.

On commenting on the appellant’s reference to the thirteen previous Tesco projects to which these conditions were not attached, the BCA states that each submission is treated individually, with reference to the complexities of each site.

No new material planning issues were raised by the BCA.

## **8. APPELLANTS RESPONSE**

The BCA’s observations on the appeal were forwarded to the appellant, and a response was received on 2<sup>nd</sup> October 2013.

The appellant again states that in respect of aisle width, (Condition No. 2), the proposal complies with the minimum requirements of the recommendations in TGD M 2010 and BS 8300.

It is stated that ‘Buildings for Everyone’ is a useful guide on optimum dimensions, but is not a statutory instrument or a standard.

It is also stated that the BCA have misinterpreted the shelving dimensions shown on the plan submitted, and that the restriction of shelving heights in Condition No. 5 would render the fit-out of the unit as a convenience store/supermarket unviable.

# **CONSIDERATION/ASSESSMENT**

## **Details lodged with application**

I consider that the detailed and comprehensive documentation included in the file supplied to me by An Bord Pleanála and which I have reviewed, is sufficient for me to make an informed recommendation to the Board and for the Board to determine the merits of the case, having regard to the requirements of Building Regulations Part M. I confirm that TGD M 2010 is the relevant document with which this application is required to comply.

## **Previous relevant cases**

I was unable to access on-line the details of any of the previous thirteen DAC Certs issued to Tesco Ireland, which are referred to in the appeal. However, I am familiar with one of the premises quoted, i.e. 302-304, Kimmage Road Lower, Dublin 6W.

## **De Novo assessment/appeal v conditions**

Having considered the drawings, details and submissions on the file and in light of the issue of a valid Disability Access Certificate with 9 conditions, 7 of which are not appealed, I am satisfied, from the extent of the detailed documentation supplied and the plans, sections and elevations of the building, that the determination by the Board of this application as if it had been made to it in the first instance is not warranted (i.e. a De Novo approach is unnecessary).

Accordingly, I consider that it would be appropriate to use the provisions of Article 40(2) of the Building Control Regulations, 1997 (as amended).

## **Content of Assessment**

I have examined the plans, sections and other details submitted by the applicant, together with the Compliance Report submitted in April 2013, the grounds of appeal submitted in August 2013 and the observations of the BCA on the appeal, submitted in August 2013.

The appellant has not appealed against Conditions Nos. 1, 3, 4, 6, 7, 8 or 9.

The appellant has appealed only Conditions Nos. 2 and 5. My recommendations on these conditions are set out below;

**Condition No. 2**

*Ensure all aisles should have a minimum of at least 1500mm wide with a clear 1800mm turning ends at both ends. This will allow two wheelchair users or trolleys to pass one another.*

Reason

*To facilitate adequate, safe and independent use of the building.*

In reviewing the submitted floor plan with reference to this condition, relating to the aisle width, I consider that in providing a corridor width of generally 1400mm wide, the applicants have complied with the minimum requirements of TGD M 2010, Section 1.3 – Circulation within buildings other than dwellings, Section 1.3.3.3(a). *i.e. the unobstructed clear width should be at least 1200mm. Elements such as columns, radiators and fire hoses should not project into this corridor width.*

However, I feel that certain items of display material indicated on the floor plan do project into these aisles, reducing the width in places to between 900mm, through 1040mm to 1200mm. The clear width is particularly compromised opposite the 4 door freezer, whose doors open outwards, further reducing the width of the aisle.

I consider that some re-thought is necessary in order to eliminate these 'pinch points' from the aisle widths, by re-locating certain display fittings to areas affording greater width. I consider that Condition No. 2 should be amended to require such re-design of the floor plan.

**Condition No. 5**

*Shelf heights should be 450-1300mm and 450-1060mm for people standing and wheelchair users respectively and not 470-1600 as stated in the submitted report.*

Reason

*To facilitate adequate, safe and independent use of the building.*

On examination of the details submitted with the Disability Access Certificate application, I interpret the dimensions of the shelving units shown to be 470mm in depth (front to back) with an overall height of 1600mm. This would mean that the highest shelf would be somewhat below the overall height of the unit of 1600mm.

I assume that, similar to other Tesco Express outlets in the city, between the lowest shelf and the top of the shelving unit, there are a number of shelves at various different heights to accommodate different products. These shelves are usually adjustable and may be altered in height to accommodate changing ranges of products. Doubtless some of these shelves will occur within the parameters of 450 – 1300mm over floor level and 450mm – 1060mm over floor level, as conditioned by the BCA.

However, to restrict the shelving heights to just those dimensions is, in my view, excessively restrictive and does not allow for best practice marketing strategy, which is essential for the viable operation of a supermarket. In light of the appellants' assertion that Tesco Express staff are trained and available to assist any customer in accessing goods from shelves at any height, I consider that this condition should be removed.

## 9. CONCLUSION/RECOMMENDATION

Having reviewed all of the conditions attached to the Disability Access Certificate as issued in November 2012, together with all of the documentation before the Board, with reference to TGD M 2010, I do not consider that the 7 un-appealed conditions should be amended in any way. I have arrived at a recommendation that a Disability Access Certificate should be issued, subject to (a) an amendment of Condition No. 2, as follows;

### Condition No. 2 (Revised)

*Ensure all aisles should have a minimum of at least 1400mm unobstructed width with a clear 1800mm diameter turning circle at both ends. Elements such as columns, barrier rails, display fixtures and fittings should not project into this minimum aisle width, but should be re-located as necessary.*

### Reason

*To facilitate adequate, safe and independent use of the building.*

And (b) the removal of Condition No. 5 from the Certificate.

## REASONS AND CONSIDERATIONS

It is considered that, subject to the issue of a new Disability Access Certificate with the amendment of Condition No. 2 and the removal of Condition No. 5, the development would comply with the requirements of Part M of the Second Schedule to the Building Regulations 1997 to 2013.

**Signed;**.....  
Denise Germaine, MRIAI, MCIAT, ICIOB

**Dated; 10.10.13**